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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/744,697	08/10/2001	Johannes Petrus E Verduijin	98M035	3297

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EXAMINER

LANGEL, WAYNE A

ART UNIT	PAPER NUMBER
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1754

DATE MAILED: 04/01/2004

Please find below and/or attached an Office communication concerning this application or proceeding.



**UNITED STATES DEPARTMENT OF COMMERCE
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SERIAL NUMBER	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09744697

EXAMINER

ART UNIT

PAPER NUMBER

DATE MAILED:

This is a communication from the examiner in charge of your application.
COMMISSIONER OF PATENTS AND TRADEMARKS

☐ This application has been examined ☒ Responsive to communication filed on 2-17-04 ☐ This action is made final.

A shortened statutory period for response to this action is set to expire 3 month(s), days from the date of this letter.
Failure to respond within the period for response will cause the application to become abandoned. 35 U.S.C. 133

Part I THE FOLLOWING ATTACHMENT(S) ARE PART OF THIS ACTION:

- | | |
|---|---|
| 1. <input type="checkbox"/> Notice of References Cited by Examiner, PTO-892. | 2. <input type="checkbox"/> Notice of Draftsman's Patent Drawing Review, PTO-948. |
| 3. <input checked="" type="checkbox"/> Notice of Art Cited by Applicant, PTO-1449. | 4. <input type="checkbox"/> Notice of Informal Patent Application, PTO-152. |
| 5. <input type="checkbox"/> Information on How to Effect Drawing Changes, PTO-1474. | 6. <input type="checkbox"/> _____ |

Part II SUMMARY OF ACTION

1. ☒ Claims 1-23 and 25 are pending in the application.

Of the above, claims _____ are withdrawn from consideration.

2. ☐ Claims _____ have been cancelled.

3. ☒ Claims 21 are allowed.

4. ☒ Claims 1-20, 22, 23 and 25 are rejected.

5. ☐ Claims _____ are objected to.

6. ☐ Claims _____ are subject to restriction or election requirement.

7. ☐ This application has been filed with informal drawings under 37 C.F.R. 1.85 which are acceptable for examination purposes.

8. ☐ Formal drawings are required in response to this Office action.

9. ☐ The corrected or substitute drawings have been received on _____. Under 37 C.F.R. 1.84 these drawings are ☐ acceptable; ☐ not acceptable (see explanation or Notice of Draftsman's Patent Drawing Review, PTO-948).

10. ☐ The proposed additional or substitute sheet(s) of drawings, filed on _____, has (have) been ☐ approved by the examiner; ☐ disapproved by the examiner (see explanation).

11. ☐ The proposed drawing correction, filed _____, has been ☐ approved; ☐ disapproved (see explanation).

12. ☐ Acknowledgement is made of the claim for priority under 35 U.S.C. 119. The certified copy has ☐ been received ☐ not been received ☐ been filed in parent application, serial no. _____; filed on _____.

13. ☐ Since this application appears to be in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under Ex parte Quayle, 1935 C.D. 11; 453 O.G. 213.

14. ☐ Other

EXAMINER'S ACTION

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The following is a quotation of the appropriate paragraphs of 35 U.S.C. § 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --
(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

The following is a quotation of 35 U.S.C. § 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 25 is rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over either European 753484 or European 753485. No distinction is seen between the process recited in claim 25, and that disclosed by either European 753484 or European 753485. European '484 and European '485 are relied upon as discussed in the last Office action. It is noted that both European '484 and European '485 teach that silicon may be replaced by phosphorus. (See page 3,

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lines 12-16 of European '485, and page 3, lines 10-14 of European '484.) Accordingly the processes of European '484 and European '485 are directed to the "synthesis of a phosphorus-containing crystalline molecular sieve". The treatment with colloidal zeolite seeds in the processes of European '484 and European '485 is considered "to control the particle size of the phosphorus-containing molecular sieve and/or the acceleration of the formation of the phosphorus-containing crystalline molecular sieve during synthesis".

Claims 1 and 17 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over European 753485. No distinction is seen between the process disclosed by European '485, and that recited in applicant's claims 1 and 17. European '485 discloses on page 3, lines 12-16 that the silicon may be replaced by phosphorus. Accordingly the process of European '485 is directed to the manufacture of a crystalline molecular sieve containing phosphorus in its framework. It is further noted that European '485 requires the presence of an organic structure directing agent on page 3, lines 25-27. Applicant's argument, that the synthesis mixture of European '485 contains alkali metal cations, is not convincing, since claims 1 and 17 do not exclude the presence of alkali metal cations in the synthesis mixture.

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Claims 10-16 are rejected under 35 U.S.C. § 103(a) as being unpatentable over European 753485. European '485 is relied upon as discussed hereinbefore. Claims 10-16 would be prima facie obvious over European '485, since it would be within the skill of one of ordinary skill in the art to determine suitable or optimum proportions of the seeds and particle size of the seeds in the process of the reference.

Claims 19, 20 and 23 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over European 753485. The molecular sieve product recited in claims 19 and 29 would not necessarily be different from that of European '485, since the process recited in applicant's claim 1 embraces an embodiment which is anticipated by European '485, i.e., when part of the silicon is replaced by phosphorus. Regarding claim 23, European '485 discloses on page 3, lines 38-43 that the zeolite products may be employed for hydrocarbon conversions or as a catalyst.

Claim 22 is rejected under 35 U.S.C. § 103(a) as being unpatentable over European 753485. It would be prima facie obvious to employ the zeolite formed in the process of European '485 for the conversion of an oxygenate to olefins, since European '485 teaches at column 3, lines 38 and 39 that the zeolites are useful as catalysts for any process requiring

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non-acidic molecular sieves. It is well-known that non-acidic molecular sieves are required for the conversion of oxygenates to olefins.

Claims 19, 20 and 23 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Lok et al., for the reasons given in the last Office action. Applicant's argument, that the use of colloidal molecular sieve seeds cannot be found anywhere in Lok et al., is not convincing, since there is no evidence on record showing that the molecular sieve product of the process recited in applicant's claim 1 would be any different from the product disclosed by Lok et al. Applicant's argument, that the composition of the final reaction mixture in Example 32 of Lok et al. is not the same as the molar composition of the synthesis mixture for producing SAPO-34, as discussed on pages 8 and 9 of the instant specification, is not convincing, since the composition disclosed in the paragraph bridging pages 8 and 9 of applicant's specification is not recited in applicant's claims. In any event, it is noted that all the examples of Lok et al. include phosphorus in the framework of the crystalline molecular sieve product, and not just Example 32. There is no evidence on record showing that the crystalline molecular sieve product formed according to applicant's claim 1 would necessarily be different

from each and every example disclosed by Lok et al.

Claim 22 is rejected under 35 U.S.C. § 103(a) as being unpatentable over Lok et al. It would be prima facie obvious to employ the silicoaluminophosphates formed according to the process of Lok et al. for the conversion of an oxygenate to olefins, since Lok et al. teach broadly in the Abstract that the compositions exhibit properties useful in chemical reactions. It would be obvious that the conversion of an oxygenate to olefins would be such a chemical reaction.

Claims 1-20, 22 and 23 are rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In claim 1, last line, it is indefinite as to whether the "desired molecular sieve" would necessarily be the same as the "crystalline molecular sieve" recited in line 1. In claim 2, the recitation of "selected from . . ." is improper Markush terminology. The phrase --the group consisting of-- should be inserted after "from" to avoid this rejection.

Claim 21 is allowed. Claims 2-9 also appear to recite allowable subject matter.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Wayne A.

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Langel whose telephone number is (571) 272-1353. The examiner can normally be reached on Monday through Friday from 8 A.M. to 3:30 P.M.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Stanley Silverman, can be reached on (571) 272-1358. The fax phone number for this Group is (703) 872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either private PAIR or public PAIR. Status information for unpublished applications is available through private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

WAL:cdc

March 29, 2004

Wayne A. Langel
WAYNE A. LANGEL
PRIMARY EXAMINER